



## MEMORANDUM

**City of Austin  
Financial Services Department  
Purchasing Office**

**DATE:** October 18, 2019  
**TO:** Memo to File  
**FROM:** Mike Zambrano, Jr. – Contract Management Specialist III  
**RE:** NI190000012: Automatic Extension, Amendment No. 1, Option 1

The subject contract is an interlocal agreement (ILA) for Economic Evaluation Services of Delivery System Reform Incentive Payment Program. It was established between The University of Texas Health Science Center at Houston and Austin Public Health (APH).

In addition to the initial amount of \$141,000.00, this contract has three **automatic** 12-month extension options (Option 1: \$24,000.00, Option 2: \$14,000.00, Option 3: \$14,000.00). The total Not-to-Exceed amount is \$193,000.00

This Memo to File documents that \$24,000.00 for Amendment No. 1, Option, has been added to the contract in AIMS. Since the extensions are automatic, there is no need for the vendor or the City of Austin (COA) to sign an amendment. For informational purposes, the total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 02/01/2019 – 09/30/2019	\$141,000.00	\$141,000.00
Amendment No. 1: Option 1 – Extension 10/01/2019 – 09/30/2020	\$24,000.00	\$165,000.00

**NOTE:** This contract also requires a valid Certificate of Liability Insurance from the vendor when adding funds.



## MEMORANDUM

**TO:** Chris Shorter, Assistant City Manager  
**THRU:** Anne L. Morgan, City Attorney *AM*  
**FROM:** Sandra Kim, Assistant City Attorney *SK*  
**DATE:** February 27, 2019  
**RE:** Delivery System Reform Incentive Payment Program ILA.

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Please find attached for your signature a copy of the above referenced interlocal agreement (ILA) with the University of Texas Health Science Center at Houston (UT Health) for an economic evaluation required of the City as a participant of the Delivery System Reform Incentive Payment Program.

On January 31, 2019, Council approved the negotiation and execution of an ILA with UT Health in an amount not to exceed \$193,000 for an initial nine-month term beginning February 1, 2019, and three automatic 12-month renewal options.

This ILA is approved as to legal form and is within your authority to sign.

**Interlocal Cooperation Agreement for**

**SYSTEM-LEVEL PROSPECTIVE ROI OF DSRIP INITIATIVES FOR  
AUSTIN PUBLIC HEALTH**

This Interlocal Cooperation Agreement for the completion of an Economic Evaluation of DSRIP Initiatives for Austin Public Health ("Agreement") is by and between the City of Austin, a home-rule municipal corporation ("City"), and The University of Texas Health Science Center at Houston ("UTHEALTH"), a state institute of higher education organized under the laws of the State of Texas and a member of The University of Texas System ("System"), together the "Parties," and each individually, a "Party."

Austin Public Health (APH), a department of City, has participated in the Delivery System Reform Incentive Payment ("DSRIP") program under the 1115 Waiver of the Centers for Medicare and Medicaid Services ("CMS") since 2013. APH must complete activities that require an economic evaluation in order to determine the cost-benefit and/or cost-effectiveness of DSRIP initiatives.

The evaluation services provided in accordance with this Agreement include qualitative and quantitative analyses of the DSRIP initiatives. These evaluations will be used in DSRIP reporting and for the purposes of APH sustainability planning.

**A. Term.** The term of this Agreement shall be from February 1, 2019 to September 30, 2019. This Agreement shall automatically renew on October 1<sup>st</sup> for a term of 12 months, and up to an additional two years, terminating on September 30, 2022, unless a Party elects to terminate the Agreement in accordance with Section I. Termination and Dispute Resolution.

**B. Services.** UTHEALTH will provide an economic evaluation of the DSRIP program. The performance measures, including the deliverables and activities, are presented in Exhibit A.

**C. Financial Terms.**

1. City shall pay UTHEALTH for services rendered under this Agreement in an amount not to exceed One Hundred Ninety-Three Thousand and No/100 Dollars (\$193,000).
2. The payment schedule for reimbursement is set forth in Exhibit A.
3. UTHEALTH shall submit payment requests to the City's Contract Manager for review and approval within fifteen (15) calendar days following each deliverable deadline identified in Exhibit A. City shall pay UTHEALTH within thirty (30) days of receipt of a complete and accurate invoice. Each invoice shall include copies of any and all materials deemed by the City, in its reasonable discretion, to support and verify the invoice.
4. UTHEALTH shall not submit, and the City shall not pay, any invoice that would cause the total amount paid by the City during any annual term of this Agreement to exceed \$141,000.

**D. Compliance with Laws.** UTHEALTH agrees to comply with all applicable federal, state, and local laws and regulations in performing and providing services under this Agreement. UTHEALTH agrees not to discriminate against employees or other persons engaged by it to provide services under this Agreement because of race, color, religion, sex, sexual orientation, gender identity, national origin, age, disability, or veteran status.

**E. Designation of Contract Managers.**

1. City's Contract Manager for this Agreement is Richard Waite, Grants Program Manager, Austin Public Health, P.O. Box 1088, Austin, Texas 78767, (512) 972-5001, who shall be responsible for oversight of this Agreement. City's Contract Manager may meet with UTHEALTH to discuss any operational issues or the status of the services or work to be performed.
2. UTHEALTH's Contract Manager for this Agreement is Kathleen Kreidler, AVP Sponsored Projects Administration, 7000 Fannin, UCT 1006, Houston, Texas 77054, 713-500-3999. UTHEALTH's Contract Manager shall represent UTHEALTH with regard to the terms of this Agreement, on behalf of its Principal Investigator Dr. Henry S Brown. Dr. Henry S Brown shall be the designated point of contact with regard to the performance of this Agreement and for City Contract Manager.
3. If UTHealth replaces its Principal Investigator, UTHealth shall promptly send written notice of the change to the other Party. If City replaces its Contract Manager, City shall promptly send written notice of the change to UTHEALTH. The notice shall identify a qualified and competent replacement and provide contact information.

**F. Right to Audit.** UTHEALTH agrees that the representatives of the Office of City Auditor, or other authorized representatives of City, shall have access to, and the right to audit, examine, or reproduce, any and all records of UTHEALTH related to the performance under this Agreement during normal business hours (Monday – Friday, 8 am – 5 pm, excluding UTHEALTH holidays). UTHEALTH shall retain all such records for a period of five (5) years after the expiration or early termination of this Agreement or until all audit and litigation matters that City has brought to the attention of UTHEALTH are resolved, whichever is longer. UTHEALTH agrees to refund to City any overpayments disclosed by any such audit.

**G. Warranties.** Each party certifies and represents to the other that the person signing this Agreement on its behalf is authorized to do so, that it has taken all action necessary to approve this Agreement, and that this Agreement is a lawful and binding obligation of the Party.

**H. Public Information Act.** The Parties acknowledge that each Party is required to comply with Chapter 552 of the Texas Government Code (Public Information Act). Under the Public Information Act, this Agreement and documents related to this Agreement that are in the possession of City or UTHEALTH or to which City or UTHEALTH has access are presumed to be public, and City or UTHEALTH may release these records to the public after the other Party consents to the release unless a mandatory or discretionary exception described in the Public Information Act applies to a document.

**I. Termination & Dispute Resolution.**

1. **Termination for Cause.** In the event of a default by a Party, the other Party shall have the right to terminate this Agreement for cause, by written notice delivered by certified mail to the Party in default. Unless the Party giving notice specifies a different time period in the notice, the Agreement is terminated ten (10) calendar days after the date of the notice. During this time period, the Party alleged to be in default may cure the default or provide evidence sufficient to prove to the other Party's reasonable satisfaction that the default does not exist or will be cured in a time satisfactory to the party alleging the default. In addition to any other remedy available at law or in equity, the Party not in default shall be entitled to recover all actual damages and direct costs incurred as a result of the other Party's default, reasonable court costs, and prejudgment and post-judgment interest at the maximum lawful rate, to the extent allowed by law. Each Party's rights and remedies under this Agreement are cumulative and are not exclusive of any other right or remedy provided by law.
2. **Termination for Convenience.** Each Party may terminate this Agreement for convenience at any time upon providing at least sixty (60) calendar-days written notice to the other Party. Upon termination, UTHEALTH shall immediately stop performance of services (unless the notice directs otherwise) and deliver all

documents, programs, reports, and materials accumulated in performing this Agreement (whether finished or in process) to City's Contract Manager within ten (10) business days. City shall pay UTHEALTH for all reimbursable costs and obligations incurred up to the date of termination. However, in no event shall UTHEALTH be entitled to recover any funds for unperformed services.

3. **Default.** A Party shall be in default under this Agreement if the Party fails to fully, timely and faithfully perform any of its obligations under this Agreement or fails to provide adequate assurance of performance under subsection 4 below (Right to Assurance).
4. **Right to Assurance.** When a Party to this Agreement in good faith has reason to question the other Party's intent to perform, that Party may make a written demand on the other Party for assurance of the intent to perform. The Party who is asked for assurance shall have ten (10) business days to provide notice of its assurance of intent to perform. If the Party fails to provide the assurance within the required time period, the demanding Party may treat this failure as an anticipatory repudiation of this Agreement.

**J. Insurance.** UTHEALTH agrees to procure the required insurance coverages attached to this Agreement as Exhibit B and deliver evidence of such coverages to City. UTHEALTH shall require all Subcontractors of every tier providing services under this Agreement to have insurance meeting the same requirements in said Exhibit B.

**K. Miscellaneous.**

1. **Independent Contractors.** This Agreement shall not be construed as creating an employer/employee relationship, a partnership, joint enterprise, or a joint venture between the Parties. City and UTHEALTH are independent contractors. City will not be responsible for reporting or paying employment taxes or other similar levies for UTHEALTH either individually or collectively that may be required by the United States Internal Revenue Service, or other State or Federal agencies. UTHEALTH agrees and understands that this Agreement does not grant to UTHEALTH or its employees any rights or privileges established for employees of City.
2. **Jurisdiction and Venue.** This Agreement is made under and shall be governed by the laws of the State of Texas, without regard to conflict of laws principles that would apply the law of any other jurisdiction. Venue for any dispute arising out of or concerning this Agreement, either administrative or judicial, shall be proper in Austin, Travis County, Texas.
3. **Force Majeure.**
  - a. Each party to this Agreement may excuse the failure of the other Party to perform its obligations under this Agreement if that failure is caused by an event of Force Majeure. Force Majeure means acts and events not within the control of the Party, and which the Party could not use due diligence to avoid or prevent. Events of Force Majeure include acts of God, strikes, riots, sabotage, civil disturbances, epidemics, acts of domestic or foreign terrorism, lightning, earthquakes, fires, storms, floods, and landslides. Force Majeure does not include economic or market conditions that affect a Party's cost but not its ability to perform.
  - b. The Party invoking Force Majeure shall give timely written notice to the other Party of the event by facsimile transmission, telephone, or electronic mail. The Party shall then promptly provide written notice of the Force Majeure in the manner required by this Agreement. The Party shall use due diligence to remedy the effects of Force Majeure as soon as reasonably possible. If a Party's performance is delayed by the event of Force Majeure, the Parties will mutually agree to extend the time for the completion of obligations by a period of time reasonably necessary to overcome the effect of the Force Majeure event.
4. **Offset of Indebtedness.** UTHEALTH acknowledges that City has provided notice of Article VIII, Section 1 of the Austin City Charter, which prohibits the payment of any money to any person who is in arrears to City

for taxes, and of § 2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed to the City.

5. **Current Revenue.** UTHEALTH acknowledges that City has provided notice that City's payment obligations to UTHEALTH are payable only from funds appropriated and currently available for the purpose of this Agreement. If the City does not appropriate funds for this Agreement, or if there are no other lawfully available funds for this Agreement, the Agreement is void. City shall provide UTHEALTH with prompt notice of failure of City to make an adequate appropriation or lack of current revenue for any fiscal year to pay the amounts due under this Agreement. In such event, UTHEALTH may immediately terminate this Agreement and the City shall be obligated to compensate UTHEALTH for services performed up through the date such notice is received by UTHEALTH.
6. **Assignment.** Neither Party may transfer any right or obligation under this Agreement without the prior written consent of the other Party.
7. **Non-Waiver.** In no event shall any act or failure to insist by City or UTHEALTH in any one or more instances upon the terms and conditions of this Agreement constitute or be construed in any way to be a waiver by either Party of any breach of covenant or default that may then or subsequently be committed by the other Party. Neither shall such act or failure to act in any manner impair or prejudice any right, power, privilege, or remedy available to either Party to enforce its rights hereunder, which rights, powers, privileges, or remedies are always specifically preserved. No representative or agent of either Party may waive the effect of this provision.
8. **Publicity.** Any news release, sign, brochure, or other advertising medium including websites disseminating information prepared or distributed by or for UTHEALTH to promote or otherwise describe the project shall recognize City as a contributor and include a statement that indicates that the information presented does not officially represent the opinion or policy position of City.
9. **No Third Party Beneficiaries.** This Agreement is not intended to confer any rights upon any other person or entity, including but not limited to any client or employee of UTHEALTH.
10. **Suspension of Funding.**
  - a. If City makes a determination that UTHEALTH has failed to timely and properly perform its obligations, City may, without limiting any rights it may otherwise have, at its discretion, and upon three (3) calendar days within such determination provide written notice to UTHEALTH, and withhold further payments to UTHEALTH. Such notice shall be given in accordance with subsection 11 below (Notices). The notice shall set forth the default or failure alleged, and the action required for cure.
  - b. The period of such suspension shall be of such duration as is appropriate to accomplish corrective action, but in no event shall it exceed sixty (60) calendar days. At the end of the suspension period, if City determines that the default or deficiency has been satisfied, UTHEALTH may be restored to full compliance status and paid all funds withheld during the suspension period.
  - c. City shall have the right to suspend this Agreement without prior notice to UTHEALTH upon a reasonable belief of imminent or actual misuse or misappropriation of this Agreement's funds. The period of suspension under this clause shall be for a period of time appropriate and reasonably necessary to complete an investigation, but in no event shall exceed sixty (60) days. Should City choose to exercise its rights under this clause, upon reaching a decision to suspend, notice will be forwarded immediately to UTHEALTH notifying it of the suspension and any subsequent investigation City will undertake.

11. **Liability.** To the extent allowed by Texas law and the Constitution of the State of Texas, the City and UTHEALTH agree that each party is responsible for its own proportionate share of any liability for its negligent acts or omissions.
12. **Notices.** All notices, demands, and requests required or permitted under this Agreement shall be in writing and may be given by: (a) hand delivery to the party to be notified; (b) deposit in the United States mail, registered or certified, with return receipt requested, postage prepaid, addressed to the party at the address set forth below; (c) overnight courier of general use in the business community of Austin, Texas; or (d) facsimile correspondence if a facsimile number is provided below and the sending party retains a machine generated confirmation sheet evidencing the time and date of the facsimile transmission. Notice given under this section shall be deemed delivered and effective on the earlier of actual receipt or three (3) calendar days following deposit in accordance with the requirements of subsection (b) above, except for (d) above, which will provide the date and time of delivery. For purposes of notice the addresses of the Parties are:

**UTHEALTH:**

The University of Texas Health Science  
Center at Houston  
Sponsored Projects Administration  
7000 Fannin, UCT 1006  
Houston, Texas 77054

*With a copy to:*

Dr. Henry S. Brown  
1616 Guadalupe, UTA-6.348  
Austin, TX 78701

And

The University of Texas Health Science  
Center at Houston  
School of Public Health  
Austin Regional Campus  
Harold Flenoy,  
Senior Administrative Manager  
1616 Guadalupe, Suite 6.300  
Austin, TX 78701

**CITY:**

*By hand delivery to:*  
Stephanie Hayden, ~~Interim~~ Director  
City of Austin  
Austin Public Health  
7201 Levander Loop, Building E  
Austin, Texas 78702

*If by mail:*

P.O. Box 1088  
Austin Texas 78768

*With copy to:*

Richard Waite, 1115 Grants Program Manager  
City of Austin - Austin Public Health  
7201 Levander Loop, Building E  
Austin, Texas 78702

13. **Entire Agreement.** This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the subject matter of this Agreement. The Parties agree that any prior contract, assertion, statement, understanding, or other commitment prior to or contemporaneous with this Agreement, whether written or oral, shall have no force or effect whatsoever; nor shall any contract, assertion, statement, understanding, or other commitment occurring during the term of this Agreement, or subsequent thereto, have any legal force or effect unless signed by both Parties.

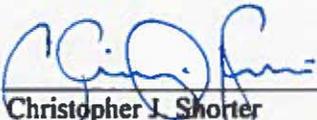
[signature pages follow]

**The University of Texas Health Science  
Center at Houston dba UTHEALTH:**

**CITY OF AUSTIN:**

Signature:   
Kathleen Kreidler  
AVP, Sponsored Projects  
Administration

Date: February 18, 2019

Signature:   
Christopher J. Shorter  
Assistant City Manager

Date: 3/4, 2019

**Proposed Program Work Statement**

**1. Introduction / Overview**

Austin Public Health (APH) has participated in the Delivery System Reform Incentive Payment (DSRIP) program under the 1115 Waiver of the Centers for Medicaid Services (CMS) since 2013. APH must complete activities that require an economic evaluation in order to prospectively estimate the system-level return on investment of DSRIP projects that share a set of outcomes.

Data availability and quality issues impeded efforts to precisely estimate the economic value of DSRIP projects during the FY18 process. APH has expressed interest in getting input on data collection priorities, timing, and methods from the University of Texas Health Science Center at Houston (UTH) team.

**2. Project Description**

We propose to focus our efforts on the following performance area: Improve services delivered to clients with diabetes.

Relevant outcomes include: Improvements in PAID scale scores, portion of relevant clients with high blood pressure, and A1c below 9.0.

Change Ideas are activities aimed at meeting a particular goal. While the following Change Ideas are current, they may change or expand as needed. The Change Ideas that are currently proposed to impact these outcomes are:

- Neighborhood Center Nurses and Health Equity teams will switch from glucose test to A1c testing among clients with diabetes (process);
- Routinely screen for diabetes through Neighborhood Center Nurses and Health Equity;
- Identify and implement evidence-based interventions (EBI's) that have been shown to improve blood pressure and A1c test results;
- Work with Emergency Departments and Emergency Medical Services to identify "frequent flyers" and engage them in service navigation; and
- Implement Central Team to work with high acuity clients.

We propose the following scope of work:

- Present findings of the eight first-round economic evaluations to health department staff and executives over 3-4 meetings.
- Work with teams to select new EBI's and identify strategies for improving current program outcomes.
- Provide input on what data to collect and when so that the data needed to evaluate program efforts is available through periodic meetings with program teams.
- Carry out a system-level forecasted return on investment (ROI) analysis for the diabetes driver using the cost/savings guidance and requirements created by HHSC, and provided by Austin Public Health.
- Present the findings of this ROI to health department staff and executives
- Provide ongoing implementation and data collection technical assistance to program teams to ensure new programs are implemented, and data is collected as planned (FY20 – 22).

**3. FY19 Deliverables (assumes February 1, 2019 start date)**

Deliverable Description	Timeframe	Compensation
Presentation of FY18 economic evaluation results	Feb - Mar 2019	\$10,000

EXHIBIT A - System-Level Prospective ROI of DSRIP Initiatives for Austin Public Health

Program enhancement recommendations report	April 2019	\$25,000
Data collection recommendations report	June 2019	\$25,000
Draft ROI report	September 1, 2019	\$16,000
Final ROI report	September 30, 2019	\$65,000
	<b>FY Total</b>	<b>\$141,000</b>
	<b>Running Total</b>	<b>\$141,000</b>

4. FY20 Deliverables (assumes October 1, 2019 start date)

Deliverable Description	Timeframe	Compensation
Presentation of Final ROI report submitted in FY19	November 30, 2019	\$10,000
Provide ongoing implementation and data collection technical assistance to program teams to ensure new programs are implemented, and data is collected as planned.	September 30, 2020	\$14,000
	<b>FY Total</b>	<b>\$24,000</b>
	<b>Running Total</b>	<b>\$165,000</b>

5. FY21 Deliverables (assumes October 1, 2020 start date)

Deliverable Description	Timeframe	Compensation
Provide ongoing implementation and data collection technical assistance to program teams to ensure new programs are implemented, and data is collected as planned.	September 30, 2021	\$14,000
	<b>FY Total</b>	<b>\$14,000</b>
	<b>Running Total</b>	<b>\$179,000</b>

6. FY22 Deliverables (assumes October 1, 2021 start date)

Deliverable Description	Timeframe	Compensation
Provide ongoing implementation and data collection technical assistance to program teams to ensure new programs are implemented, and data is collected as planned.	September 30, 2022	\$14,000
	<b>FY Total</b>	<b>\$14,000</b>
	<b>Running Total</b>	<b>\$193,000</b>

**EXHIBIT B - System-Level Prospective ROI of DSRIP Initiatives for Austin Public Health**

**EXHIBIT B**

**Insurance:**

The University of Texas Health Science Center at Houston (UTHEALTH) is part of the University of Texas System, an agency of the State of Texas, and is required to maintain the following:

- (a) as defined by the Texas Labor Code, is self-insured for all workers compensation. As such, the University provides coverage for its employees as stipulated under the Texas Labor Code, Title 5 Workers' Compensation, Chapter 503. The University's workers' compensation program is administered through a third party administrator and adheres to rules and regulations established by the Texas Division of Workers' Compensation.
- (b) is also self-insured for all third party liability coverage. As such UTHEALTH, based on the Texas Tort Claims Act, Chapter 101 of the Texas Civil Practice and Remedies Code, has limited liability under the Act. Liability in cases of personal injury or death is limited to a maximum amount of \$250,000 per person and \$500,000 for each single occurrence. The maximum amount of liability for injury to or destruction of property is \$100,000 for each single occurrence.
- (c) Automobile liability insurance for all owned, non-owned and hired vehicles with limits of at least \$600,000 combined single limit.

**Liability:** To the extent allowed by Texas law and the Constitution of the State of Texas, the City and UTHEALTH agree that each party is responsible for its own proportionate share of any liability for its negligent acts or omissions.

## **Business Associate Agreement Provisions**

This Business Associate Agreement (the "Agreement"), is made as of the 1<sup>st</sup> day of January, 2019 (the "Effective Date"), by and between The University of Texas Health Science Center at Houston ("UTHEALTH"), a state institute of higher education organized under the laws of the State of Texas and a member of The University of Texas System ("System") (Business Associate) and the City of Austin, a Texas home rule municipal corporation (Covered Entity) (collectively the "Parties") to comply with privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164 ("the Privacy Rule") and security standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162 and 164, subpart C ("the Security Rule"), and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 and regulations promulgated thereunder, and any applicable state confidentiality laws.

### **RECITALS**

WHEREAS, Business Associate provides SYSTEM-LEVEL PROSPECTIVE ROI OF DSRIP INITIATIVES FOR AUSTIN PUBLIC HEALTH (Services) to or on behalf of Covered Entity;

WHEREAS, in connection with these Services, Covered Entity discloses to Business Associate certain protected health information that is subject to protection under the HIPAA Rules; and

WHEREAS, the HIPAA Rules require that Covered Entity receive adequate assurances that Business Associate will comply with certain obligations with respect to the Protected Health Information (PHI) received in the course of providing Services to or on behalf of Covered Entity.

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- A. **Definitions.** Terms used herein, but not otherwise defined, shall have the meaning ascribed by the Privacy Rule and the Security Rule.
1. **Breach.** "Breach" shall have the same meaning as the term "breach" in 45 C.F.R. §164.402.
  2. **Business Associate.** "Business Associate" shall have the same meaning as the term "business associate" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean [enter name of BA].
  3. **Covered Entity.** "Covered Entity" shall have the same meaning as the term "covered entity" in 45 C.F.R. §160.103 and in reference to the party to this agreement shall mean the City of Austin, a Texas home rule municipal corporation.

4. **Designated Record Set.** “Designated Record Set” shall mean a group of records maintained by or for a Covered Entity that is: (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the covered entity to make decisions about Individuals. For purposes of this definition, the term “record” means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.
5. **HIPAA Rules.** The Privacy Rule and the Security Rule, and amendments codified and promulgated by the HITECH Act are referred to collectively herein as “HIPAA Rules.”
6. **Incident.** “Incident” means a potential or attempted unauthorized access, use, disclosure, modification, loss, disruption, or destruction of PHI, which has the potential for jeopardizing the confidentiality, integrity, or availability of the PHI.
7. **Individual.** “Individual” shall mean the person who is the subject of the protected health information.
8. **Protected Health Information (“PHI”).** “Protected Health Information” or PHI shall have the same meaning as the term “protected health information” in 45 C.F.R. §160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of covered entity pursuant to this Agreement.
9. **Required by Law.** “Required by Law” shall mean a mandate contained in law that compels a use or disclosure of PHI.
10. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services, or his or her Designee.
11. **Sensitive Personal Information.** “Sensitive Personal Information” shall mean an individual’s first name or first initial and last name in combination with any one or more of the following items, if the name and the items are not encrypted: a) social security number; driver’s license number or government-issued identification number; or account number, or credit or debit card number in combination with any required security code, access code, or password that would permit access to an individual’s financial account; or b) information that identifies an individual and relates to: the physical or mental health or condition of the individual; the provision of health care to the individual; or payment for the provision of health care to the individual.
12. **Subcontractor.** “Subcontractor” shall have the same meaning as the term “subcontractor” in 45 C.F.R. §160.103.

13. **Unsecured PHI.** “Unsecured PHI” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued under Section 13402(h)(2) of Public Law 111-5.
- B. **Purposes for which PHI May Be Disclosed to Business Associate.** In connection with the Services provided by Business Associate to or on behalf of Covered Entity described in this Agreement, Covered Entity may disclose PHI to Business Associate for the purposes of completing a system-level prospective return on investment of DSRIP initiatives for Austin Public Health.
- C. **Obligations of Covered Entity.** If deemed applicable by Covered Entity, Covered Entity shall:
1. provide Business Associate a copy of its Notice of Privacy Practices (“Notice”) produced by Covered Entity in accordance with 45 C.F.R. 164.520 as well as any changes to such Notice;
  2. provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate’s permitted or required uses and/or disclosures;
  3. notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI;
  4. not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity;
  5. notify Business Associate of any amendment to PHI to which Covered Entity has agreed affects a Designated Record Set maintained by Business Associate;
  6. if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of its policies and procedures related to an Individual’s right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI; and
  7. direct, review and control notification made by the Business Associate to individuals of a breach of their Unsecured PHI in accordance with the requirements set forth in 45 C.F.R. §164.404.
- D. **Obligations of Business Associate.** Business Associate agrees to comply with applicable federal and state confidentiality and security laws, specifically the provisions of the HIPAA Rules applicable to Business Associates, including:
1. **Use and Disclosure of PHI.** Except as otherwise permitted by this Agreement or applicable law, Business Associate shall not use or disclose PHI except as necessary

to provide Services described above to or on behalf of Covered Entity, and shall not use or disclose PHI that would violate the HIPAA Rules if used or disclosed by Covered Entity. Provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities. Business Associate shall in such cases:

- (a) provide information and training to members of its workforce using or disclosing PHI regarding the confidentiality requirements of the HIPAA Rules and this Agreement;
- (b) obtain reasonable assurances from the person or entity to whom the PHI is disclosed that: (a) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purpose for which it was disclosed to the person or entity; and (b) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached; and
- (c) agree to notify Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules.

2. **Data Aggregation.** In the event that Business Associate works for more than one "Covered Entity," as that term is defined generally in the HIPAA rules, Business Associate is permitted to use and disclose PHI for data aggregation purposes, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under the HIPAA Rules.

3. **De-identified Information.** Business Associate may use and disclose de-identified health information if written approval from the Covered Entity is obtained, and the PHI is de-identified in compliance with the HIPAA Rules. Moreover, Business Associate shall review and comply with the requirements defined under Section E. "Permitted Uses and Disclosures by Business Associate" of this Agreement.

4. **Safeguards.**

- (a) Business Associate shall maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as Required by Law. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.
- (b) Business Associate shall assure that all PHI be secured when accessed by Business Associate's employees, agents, or subcontractor. Any access to PHI by Business Associate's employees, agents, or subcontractors shall be limited to legitimate business needs while working with PHI. Any

personnel changes by Business Associate, eliminating the legitimate business needs for employees', agents' or contractors' access to PHI – either by revision of duties or termination – shall be immediately reported to Covered Entity. Such reporting shall be made no later than the third business day after the personnel change becomes effective.

5. **Minimum Necessary.** Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of “minimum necessary use and disclosure,” i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and the use of limited data sets when possible.
6. **Disclosure to Agents and Subcontractors.** If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, to agents, including a subcontractor, Business Associate shall require the agent or subcontractor to agree to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall ensure that any agent, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or subcontractor in providing the Services as if they were Business Associate’s own acts, failures, or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.
7. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:
  - (a) **Individual Right to Copy or Inspection.** Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that Set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual shall have a right to obtain a copy of such information in electronic format, and if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH Section 13405(c) of the HITECH Act. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline by responding to the Individual’s request within 15 days following receipt of the request. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary if the Individual has agreed in advance

to accept the information in summary form. A reasonable, cost-based fee for copying health information may be charged. If Covered Entity maintains the requested records, Covered Entity, rather than Business Associate, shall permit access according to its policies and procedures implementing the Privacy Rule.

(b) Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. §164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. §164.526.

(c) Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is in paper or electronic format, in accordance with 45 C.F.R. §164.528 and Section 13405(c) of the HITECH Act, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Under the Privacy Rule, Covered Entity is required to take action on such requests as soon as possible but not later than 60 days following receipt of the request. Business Associate agrees to use its best efforts to assist Covered Entity in meeting this deadline but not later than 30 days following receipt of the request. Such accounting must be provided without cost to the individual or Covered Entity if it is the first accounting requested by an individual within any 12 month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if Business Associate informs the individual in advance of the fee and is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six years prior to the request (not including disclosures prior to the compliance date of the Privacy Rule) and shall be provided for as long as Business Associate maintains the PHI.

8. Internal Practices, Policies, and Procedures, and Audit. Except as otherwise specified herein, Business Associate shall make available its internal practices, policies, books, records, and procedures relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary, or his or her agents for the purpose of determining Covered Entity's compliance with the HIPAA Rules, or any other health oversight agency, or to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified by Covered Entity or the Secretary. Except to the extent prohibited by law, Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of any and all requests by

or on behalf of any and all federal, state, and local government authorities served upon Business Associate for PHI.

9. **Notice of Privacy Practices.** Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.
10. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.
11. **Knowledge of HIPAA Rules.** Business Associate agrees to review and understand the HIPAA Rules as it applies to Business Associate, and to comply with the applicable requirements of the HIPAA Rule, as well as any applicable amendments.
12. **Incident Notification.** To the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure PHI will render such PHI unusable, unreadable and indecipherable to individuals unauthorized to acquire or otherwise have access to such PHI in accordance with HHS Guidance published at 74 Federal Register 19006 (April 17, 2009) or such later regulations or guidance promulgated by HHS or issued by the National Institute for Standards and Technology (also known as "NIST") concerning the protection of identifiable data such as PHI. Business Associate will promptly report any successful Incident of which it becomes aware and at the request of the Covered Entity, will identify: the date of the Incident; scope of Incident; Business Associate's response to the Incident; and the identification of the party responsible for causing the Incident.
13. **Information Breach Notification for PHI.** Business Associate expressly recognizes that Covered Entity has certain reporting and disclosure obligations to the Secretary and the Individual in case of a security breach of unsecured PHI. Where Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses or discloses unsecured paper or electronic PHI, immediately following the "discovery" (within the meaning of 45 C.F.R. §164.410(a)) of a breach of such information, Business Associate shall notify Covered Entity of such breach. Initial notification of the breach does not need to be in compliance with 45 C.F.R. §164.404(c); however, Business Associate must provide Covered Entity with all information necessary for Covered Entity to comply with 45 C.F.R. §164.404(c) without reasonable delay, and in no case later than three days

following the discovery of the breach. Business Associate shall be liable for the costs associated with such breach if caused by the Business Associate's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Business Associate's agents, officers, employees or subcontractors.

14. **Breach Notification to Individuals.** Business Associate's duty to notify Covered Entity of any breach does not permit Business Associate to notify those individuals whose PHI has been breached by Business Associate without the express written permission of Covered Entity to do so. Any and all notification to those individuals whose PHI has been breached shall be made by the Business Associate under the direction, review, and control of Covered Entity. The Business Associate will notify Covered Entity via telephone with follow-up in writing to include: name of individuals whose PHI was breached; information breached; date of breach; and form of breach. The cost of the notification will be paid by the Business Associate.
  
  16. **Data Breach Notification and Mitigation Under Other Laws.** In addition, Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any breach of individually identifiable information (including but not limited to PHI and referred to hereinafter as "Individually Identifiable Information") and Sensitive Personal Information subject to Section 521.053 of the Texas Business and Commerce Code that, if misused, disclosed, lost or stolen, would trigger an obligation under one or more State data breach notification laws (each a "State Breach") to notify the individuals who are the subject of the information. Business Associate agrees that in the event any Individually Identifiable Information and Sensitive Personal Information is lost, stolen, used or disclosed in violation of one or more State laws, Business Associate shall promptly: (i) notify the Covered Entity within **15 business calendar days** of such misuse, disclosure, loss or theft; (ii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach; (iii) cooperate and assist Covered Entity with any investigation into any State Breach or alleged State Breach conducted by any State Attorney General or State Consumer Affairs Department (or their respective agents); (iv) cooperate with Covered Entity regarding the obligations of Covered Entity and Business Associate to mitigate to the extent practicable any potential harm to the individuals impacted by the State Breach; and (v) assist with the implementation of any decision by any State agency, including any State Attorney General or State Consumer Affairs Department (or their respective agents), to notify individuals impacted or potentially impacted by a State Breach. This requirement shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI, Individually Identifiable Information, or Sensitive Personal Information.
- E. **Permitted Uses and Disclosures by Business Associates.** Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of Covered Entity as specified in this Business Associate Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, or the minimum

necessary policies and procedures of the Covered Entity. Also, Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with the HIPAA Rules.

1. **Use.** Business Associate will not, and will ensure that its directors, officers, employees, contractors and other agents do not, use PHI other than as permitted or required by Business Associate to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Rule or Security Rule if used by Covered Entity.
2. **Disclosure.** Business Associate will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event disclose PHI in any manner that would constitute a violation of the Privacy Rule or Security Rule if disclosed by Covered Entity.
3. **Right Title and Interest.** Business Associate acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in Covered Entity. Neither Business Associate nor any of its employees, agents, consultants or assigns will have any rights in any of the PHI, except as expressly set forth above. Business Associate represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without Covered Entity's express written consent.

**F. Application of Security and Privacy Provisions to Business Associate.**

1. **Security Measures.** Sections 164.308, 164.310, 164.312 and 164.316 of Title 45 of the Code of Federal Regulations dealing with the administrative, physical and technical safeguards as well as policies, procedures and documentation requirements that apply to Covered Entity shall in the same manner apply to Business Associate. Any additional security requirements contained in Sub Title D of Title XIII of Division A of the HITECH Act that apply to Covered Entity shall also apply to Business Associate. Pursuant to the foregoing requirements in this Section F.1, the Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the paper or electronic PHI that it creates, has access to, or transmits. Business Associate will also ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect such information. Business Associate will ensure that PHI contained in portable devices or removable media is encrypted.
2. **Annual Guidance.** For the first year beginning after the date of the enactment of the HITECH Act and annually thereafter, the Secretary shall annually issue guidance on the most effective and appropriate technical safeguards for use in carrying out the Sections referred to in Section F.1 "Security Measures" and the security standards in subpart C of part 164 of title 45, Code of Federal Regulations. Business Associate

shall, at their own cost and effort, monitor the issuance of such guidance and comply accordingly.

3. **Privacy Provisions.** The enhanced HIPAA privacy requirements, including but not necessarily limited to accounting for certain PHI disclosures for treatment, restrictions on the sale of PHI, restrictions on marketing and fundraising communications, and payment and health care operations contained in Subtitle D of Title XIII of Division A of the HITECH Act that apply to the Covered Entity, shall equally apply to the Business Associate.
4. **Application of Civil and Criminal Penalties.** If Business Associate violates any security or privacy provision specified Section 13404(a) and (b) of the HITECH Act, Sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) shall apply to Business Associate with respect to such violation in the same manner that such Sections apply to Covered Entity if it violates such provisions.

**G. Term and Termination.**

1. **Term.** This Agreement shall be effective as of the Effective Date and shall be terminated when all PHI provided to Business Associate by Covered Entity, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.
2. **Termination without Cause.** Either Party shall have the right to terminate this Agreement for any reason upon thirty days written notice.
3. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - i. Provide an opportunity for Business Associate to cure the breach within 30 days of written notice of such breach, or end the violation and terminate this Agreement, whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or
  - ii. Immediately terminate this Agreement whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
4. **Effect of Termination.** Upon termination of this Agreement for any reason. Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, or maintained by Business Associate in any form. If Business Associate determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI, and limit further uses and disclosures of the PHI to those

purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI. This Section shall survive the expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains PHI.

H. **No Warranty.** PHI IS PROVIDED TO BUSINESS ASSOCIATE SOLELY ON AN "AS IS" BASIS. COVERED ENTITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

I. **Miscellaneous.**

1. **Indemnification.** To the extent permitted by law, Business Associate agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, attorney's fees, defense costs, and equitable relief), for any damage or loss incurred by Covered Entity arising out of, resulting from, or attributable to any acts or omissions or other conduct of Business Associate or its agents in connection with the performance of their duties under this Agreement. This indemnity shall apply even if Covered Entity is alleged to be solely or jointly negligent or otherwise solely or jointly at fault; provided, however, that a trier of fact finds Covered Entity not to be solely or jointly negligent or otherwise solely or jointly at fault. This indemnity shall not be construed to limit Covered Entity's rights, if any, to common law indemnity.

Covered Entity shall have the option, at its sole discretion, to employ attorneys selected by it to defend any such action, the costs and expenses of which shall be the responsibility of Business Associate. Covered Entity shall provide Business Associate with timely notice of the existence of such proceedings and such information, documents, and other cooperation as reasonably necessary to assist Business Associate in establishing a defense to such action.

These indemnities shall survive termination of this Agreement, and Covered Entity reserves the right, at its option and expense, to participate in the defense of any suit or proceeding through counsel of its own choosing.

2. **Mitigation.** If Business Associate violates this Agreement or either of the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.
3. **Rights of Proprietary Information.** Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
4. **Survival.** The respective rights and obligations of Business Associate under Section E.3 "Right Title and Interest" of this Agreement shall survive the termination of this Agreement.

5. **Notices.** Any notices pertaining to this Agreement shall be given in writing and shall be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as follows:

If to Covered Entity:  
City of Austin – Austin Public Health  
P.O. Box 1088  
Austin, Texas 78768

If to Business Associate:  
The University of Texas Health Science  
Center at Houston  
7000 Fannin, UCT 1006  
Houston, Texas 77030

Attn: Richard Waite, Health Campus Bldg E.

Attn: Sponsored Projects Administration

Phone Number: 512-972-5001

Phone Number: 713-500-3999

6. **Amendments.** This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties hereto. The Parties, however, agree to amend this Agreement from time to time as necessary, in order to allow Covered Entity's compliance with the requirements of the HIPAA Rules.
7. **Choice of Law.** This Agreement and the rights and obligations of the Parties hereunder shall be governed by and construed under the laws of the State of Texas, without regard to applicable conflict of laws principles.
8. **Assignment of Rights and Delegation of Duties.** This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.
9. **Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, (ii) any fiduciary duty owed by one Party to another Party or any of its affiliates, or (iii) a relationship of employer and employee between the Parties.
10. **No Waiver.** Failure or delay on the part of either Party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.

11. **Equitable Relief.** Any disclosure or misappropriation of PHI by Business Associate in violation of this Agreement will cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure or breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.
12. **Severability.** The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
13. **No Third Party Beneficiaries.** Nothing in this Agreement shall be considered or construed as conferring any right or benefit on a person not a party to this Agreement nor imposing any obligations on either Party hereto to persons not a party to this Agreement.
14. **Headings.** The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement, and shall not affect in any way the meaning or interpretation of this Agreement.
15. **Entire Agreement.** This Agreement, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties hereto with respect to the subject matter hereof, and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties with respect to the subject matter hereof.
16. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules and any applicable state confidentiality laws. The provisions of this Agreement shall prevail over the provisions of any other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.
17. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations, the Federal Register, or any other federal guidance or policy shall mean the cited section or reference as they may be amended from time to time.

Agreed to:

**BUSINESS ASSOCIATE**

By: Kristin L. Parks  
Digitally signed by Kristin L. Parks, Director of  
Clinical Research Finance and Administration  
Sponsored Project Administration  
UTHealth Houston  
Date: 2019.01.18 10:57:44 -0500  
(Authorized Signature)

Name: Kristin Parks  
(Type or Print)

Title: \_\_\_\_\_

Date: 01/18/19

**COVERED ENTITY**

By: Stephany Y. Hayden  
(Authorized Signature)

Name: Stephany Y. Hayden  
(Type or Print)

Title: Director

Date: 02/21/19



# Austin Public Health



February 4, 2019

To Whom It May Concern,

The Austin Public Health Department of the City of Austin is seeking services from UTHealth for the completion of project " UTHealth System-Level Prospective ROI of DSRIP Initiatives for Austin Public Health."

For the purposes of this project, Austin Public Health is limiting the indirect cost rate to 10%. This rate is consistent with many of Austin Public Health's contracts.

Should you have any further questions, please contact Richard Waite, DSRIP Grants Program Manager for Austin Public Health at 512-972-5001 or email [richard.waite@austintexas.gov](mailto:richard.waite@austintexas.gov).

Appreciatively,

A handwritten signature in black ink that reads "R. Waite".

Richard Waite, LMSW  
DSRIP Grants Program Manager  
Austin Public Health